IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

WP(C).No. 9352 of 2007(L)

PETITIONER:

A.A.HAMEED, MANAGER, AZAD MEMORIAL L.P.
SCHOOL PERUMKULAM, RESIDING AT TAJ MANZIL,
PERUMKULAM P.O., ATTINGAL.

BY ADV. SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, GENERAL EDUCATION
DEPARTMENT, GOVERNMENT SECRETARIAT, TRIVANDRUM.

2. THE DISTRICT EDUCATIONAL OFFICER, ATTINGAL

3. THE ASSISTANT EDUCATIONAL OFFICER,
ATTINGAL.

BY SENIOR GOVERNMENT PLEADER, SMT. M.R.SREELATHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 9352/2007(L)

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF THE STAFF FIXATION ORDER FOR THE YEAR 2006-07 IN RESPECT OF THE PETITIONERS SCHOOL ISSUED BY THE 3RD RESPONDENT DATED 3.10.06.

EXT. P2: COPY OF THE APPLICATION DATED 9.10.06 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT. P3: COPY OF THE ORDER NO.58443/H 1/06/G.EDN. DATED 7.11.06 ISSUED BY THE 1ST RESPONDENT.

EXT. P4: COPY OF THE STAFF FIXATION ORDER NO.D.DIS.D/1313/06 DATED 12.1.07 ISSUED BY THE 3RD RESPONDENT.

EXT. P5: COPY OF THE ORDER NO.E 1138/06/K.DIS DATE3D 16/10/06 ISSUED BY THE 3RD RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE

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S.SIRI JAGAN, J.

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W.P.(C) No.9352 of 2007(L)

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Dated, this the 10th day of December, 2007

JUDGMENT

During the academic year 2005-06, the petitioner's School had 13 divisions with 12 posts of LPSA's, 2 posts of Arabic Teachers and a Headmaster. In the year 2006-07, on verification of the student strength on the 6th working day of the year there were 562 students warranting 14 class divisions in the school. However, in view of the fact that when additional divisions are to be sanctioned higher level verification has to be conducted, the 2nd respondent visited the school on 18.9.06. On that day there were only 457 students present, as a result of which only 12 divisions were sanctioned instead of 14 divisions. On the ground that on that particular day there were very heavy rains and 24 students were undergoing treatment in various hospitals, the petitioner sought reverification, which was allowed by the Government. Reverification has conducted on 18.12.06, on which date it was found that the petitioner's school was eligible

for 14 divisions. However, relying on last sentence in Rule 12 of Chapter XXIII of KER only the divisions available for the previous year were sanctioned. Petitioner therefore seeks following reliefs:

i) Declare that Rule 12 of Chapter XXIII KER, to the extent it declines granting of a new division based on sufficient effective strength after re-visit by the Educational Officer as directed by the Government, only for the reason that it was not in the staff fixation in the previous year is illegal, ultra vires and unconstitutional.

ii) issue a writ of mandamus or any other appropriate Writ, order or direction, directing the respondents to sanction the 14th division and a new post of LPSA pursuant to Ext.P4 at AMLP School, Perumkulam from 15.7.06.

iii) issue a writ of certiorari or any another appropriate writ order or direction calling for the records leading to Ext. P4 and P5 and quash the same to the extent it refuse sanction for the additional post of LPSA and approval for appointment to the said post;

iv)Issue such other and further reliefs as this Hon'ble Court may deem just and proper.

2. The learned Government Pleader submits that in view of Rule 12, petitioners are entitled to only 12 class divisions in his School. The very same question was considered by me in an exactly identical situation in O.P. NO.18651/2000 in which I have held that Rule 12 has to be read down to mean that only when after the second revisit additional divisions are to be sanctioned in addition to those sanctioned as per the first visit additional divisions can be refused. Following the said decision, I quash

Exts. P4 and P5 orders and direct the respondents to refix the class divisions of the petitioner's school for the academic year 2006-07 as 14 class divisions and to approve the appointments made by the petitioner in accordance with staff strength applicable to 14 class divisions, if such appointments are otherwise in order. Orders in this regard shall be passed by the competent among the respondents within a period of one month from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

S.SIRI JAGAN,
JUDGE

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